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**In the
Indiana Supreme Court**

No. 49S02-0801-CR-12

ELMER BENNETT,

Appellant (Defendant below),

v.

STATE OF INDIANA,

Appellee (Plaintiff below).

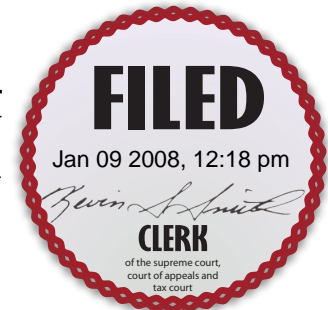
Appeal from the Marion Superior Court, Criminal Division, No. 49F15-0510-FD-185054
The Honorable Scott Devries, Commissioner

On Petition to Transfer from the Indiana Court of Appeals, No. 49A02-0609-CR-739

January 9, 2008

Shepard, Chief Justice.

The contention in this appeal is that to obtain a conviction for theft, the State must prove the defendant intended to deprive the owner of its use – permanently. The Court of Appeals correctly rejected this contention.



The State charged appellant Elmer Bennett with theft and auto theft, both class D felonies. The trial court found Bennett guilty and sentenced him to two years in the Department of Correction for each count, served concurrently.

Bennett appealed, challenging the sufficiency of the evidence and arguing that Indiana's theft statute requires proof that the offender intended to deprive the owner permanently of the value or use of his property. The Court of Appeals affirmed, Bennett v. State, 871 N.E.2d 316 (Ind. Ct. App. 2007), and got it absolutely right.

Relying on our decision in Coff v. State, 483 N.E.2d 39 (Ind. 1985), the Court of Appeals held that Ind. Code §§ 35-43-4-2 (theft) and -2.5 (auto theft) do not require the State to prove that the defendant intended to deprive the owner of his property permanently. In Coff, the defendant was convicted of theft and raised the same argument on appeal that Bennett raises here. We rejected the notion that Indiana's theft statute contains the common law larceny element requiring intent to permanently deprive.

This aspect of Coff is still good law. We grant transfer and adopt the opinion of the Court of Appeals under Ind. Appellate Rule 58(A)(1).

We affirm the trial court.

Dickson, Sullivan, Boehm, and Rucker, JJ., concur.